

Suite 602**LAND & PROPERTY ISSUES**

*What is commercial real estate?
Commercial Leasing
A Leasing Checklist*

602.01 WHAT IS COMMERCIAL REAL ESTATE?

Land, Land with Improvements – Buildings, etc. with a Commercial or Industrial Zoning.

Business which are bought and sold: Industrial, Commercial, Retail, etc.

Securities or Right over Real Property

Commercial Real Estate can have many faces. Its main purpose is to earn money for the owner. Simply, it is Real Estate in many forms which permit and offer an owner to earn money with the Real Estate.

- In its present state – i.e.; a Revenue Building (s) which provide weekly, monthly or annual income from rentals.
- Land which has a latent value, pending its use 'as-is', or development by way of subdivision or adding improvements in the form of buildings, which produce or are capable of producing an income (revenue).
- The purchase or sale of a business

What is NOT considered Commercial? A residential single family housing unit – improved or unimproved.

602.02 WHAT IS RESIDENTIAL REAL ESTATE?

Residential Real Estate is defined for the purpose of this Glossary, as all non revenue producing properties and improvements, in which a single person or family may live. This may be a residential building lot, a single family home, a townhouse, a condominium apartment (Strata Unit) or a mobile home.

COMMERCIAL LEASING**602.03 COMMERCIAL SPACE**
by Sherrie Bennett

Leasing a commercial space instead of committing yourself to owning commercial real estate can be an excellent move. But there are fewer tenant-friendly laws when it comes to commercial leases, and no standard lease agreements. You'll need a lawyer's help to negotiate the bet deal on a commercial lease.

Every commercial lease should be in writing and should include the following details:

- How much rent is due, including any increases (called escalations)? You'll want to know the going rate for space in the neighborhood before you begin negotiating. It also helps to let the landlord make the first offer, and ask for a lower rent than you think you can get initially. Escalations should be for specific dollar amounts or tied to a known method of calculation, such as cost of living indexes.
- How long the lease runs, when it begins and under what conditions you can renew the lease. A shorter lease is very important – for example, if you have a retail store – you may want to opt for a longer lease. You can always attempt to renegotiate lower rents or improvements as time goes on. If you have a month-to-month lease, you'll want to make sure the landlord has to give you as much time as possible when terminating the lease.
- Whether your rent includes utilities, such as phone, electricity and water, or whether you'll be charged for these items separately.
- Whether you'll be responsible for paying any of the landlord's maintenance expenses, property taxes and insurance costs, and if so, how they'll be calculated.
- Any required deposit, and whether you can use a letter of credit instead of cash.
- A description of the space you're renting, square footage, available parking and other amenities.
- A detailed listing of any improvements the landlord will make to the space before you move in. Your landlord may be more willing to make lots of expensive improvements if you're signing a longer lease.
- Any representations made to you by the landlord or leasing agent, such as amount of foot traffic, average utility costs, restrictions on the landlord renting to competitors (such as a shopping mall), compliance with Americans With Disabilities Act requirements and so forth. These may come in handy later when you want to renegotiate your lease.
- Assurances that the space is zoned sufficiently for your type of business. Of course, you'll also want to check out this information with local zoning authorities.
- Whether you'll be able to sublease or assign the lease to someone else, and if so, under what conditions. You'll want to negotiate the ability to sublease so that you can move with as little financial pain as possible.
- How either you or the landlord can terminate the lease and the consequences.

When it comes time to renegotiate your commercial lease, you'll want to document your reasons for a lower rent or more space improvements with hard facts regarding lower foot traffic than represented, a downturn in your industry and so forth. Some landlords will even be willing to take a percentage of your sales instead of a flat rental fee when economic times are slow.

As a tenant, you have far more leeway when negotiating a commercial lease than with a residential lease, which is one reason why having your own lawyer to represent you in negotiations is so important. A lawyer can also research zoning laws and local ordinances and fill you in on local real estate market conditions and customs.

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602.04 LEASING EQUIPMENT

Leasing operating equipment, such as computers, vehicles and machinery often makes more sense than buying. But while favourable leases are often good bets, unfavourable ones can easily sink an emerging venture. While doing your legal homework can help prevent bad deals, it's always a good idea to have a lawyer look over a lease before signing it.

Is your lease likely to be deemed a purchase for tax purposes by the IRS? If so, leasing may not give you a tax advantage. If not, you may be able to deduct payments on the leased equipment.

A LEASING CHECKLIST

In many states, commercial leases are not covered under consumer protection laws that normally safeguard tenant rights. It is assumed that commercial leases are contracts between knowledgeable business people, and therefore less government regulation is needed than in residential leases. Thus it is essential to scrutinize every aspect of the lease and renegotiate unfavourable terms before signing.

Non-Compete Clause

If you run a retail establishment, insist upon a provision that prohibits the landlord from renting space in or near the same retail center to a competitor.

Dispute resolution

If there is a dispute involving you and the lessor, by what method will it be resolved? Negotiating for mediation or arbitration rather than regular court is usually advantageous.

Spatial Specifications

Exactly how much space is being rented, and which areas are included?

It is wise to take a tape measure and confirm the lessor's measurements, as they are often exaggerated. Finding a discrepancy in reported space and actual space

is a valuable bargaining tool. Do you have the right to move to another space in the complex if you need more room to expand?

Default and Termination

Under what conditions can either party free themselves from the lease and what notice requirements are required?

Pets

In an effort to attract skilled employees, more employers are allowing pets in the workspace. Will the lessor permit pets in the leased space?

Rent

Prices are always negotiable in commercial leases, and may depend greatly on concessions made with regard to other aspects of the lease as well as general market conditions. If options to renew are considered, what rent increases are allowable, and how are they calculated?

Additional costs

The cost of utilities, taxes and maintenance are often passed on to the tenant. If you agree to pay them, make certain that your portion is in line with the percentage of the building that you occupy.

Build-outs

Improvements, modifications and fixtures added to a rental space are called build-outs. Negotiation should include whether these are allowed, which party will pay for them, and who owns them after the lease ends.

Sublease

The term "sublease" refers to a transfer of less than the entire term of the lease. Under a sublease, the subtenant is not directly responsible to the lessor whose recourse against the subtenant is only through the original tenant. If your business fails, or if the location doesn't match your needs, do you have the lessor's permission to sublet the space to another party.

Term Options

Many new businesses negotiate a short initial lease with one or more options to renew. Options give you the right to stay by notifying your landlord in writing a certain number of days or months before the lease expires. Landlords may want a higher rent for the renewal period, as well as an extra fee in exchange for the option.

Leasing Pitfalls

The following factors may adversely affect the tax status of your leases:

- Rental payments that establish equity or lead to a property title

- Rental payments that exceed the fair rental value of the property by a wide margin
- Rental payments that are actually the equivalent of interest on a purchase.
- When, subsequent to the end of the lease, the option to purchase is exercised at a rate that is quite low in comparison to the actual property value.

Zoning Overview

Zoning Ordinances and Regulations are laws that define and restrict how you can use your property. Cities, counties, townships and other local governments adopt zoning plans in order to set development standards to assure that land is used for the common good.

Why Zoning is such a big issue

Zoning laws come into play on every single real estate development, regardless of how big or small. So if you are thinking about buying property or making improvements to property you already own, you'd better be sure you understand the zoning restrictions before you commit to anything.

One zoning use is typically not compatible with another. For example, a commercial building usually cannot be constructed on property that's zoned for residential uses.

If you buy open ground to build your dream house that is in an agricultural zoning, you may not be able to build it without a change in the zoning.

Getting the zoning changed on property is a very difficult process. It requires a process of giving public notice and then having a variance approved by government agencies that oversee enforcement of the zoning plan. Opposition to zoning changes by neighbors and other interested parties can be fierce.

You can find out how property is zoned by calling your local planning department. They can also explain what you would need to do to get a variance.

Before getting too involved in a zoning issue, it would no doubt be in your best interests to hire a local land use attorney to help you through the process.